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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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09/288,685    04/09/99    FREDERICK    D    D-1108

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PM82/0717

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EXAMINER
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SHAPIRO, J	
ART UNIT	PAPER NUMBER

3651  
DATE MAILED:

07/17/01

*9*

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

09/288,685

Applicant(s)

FREDERICK, DAVID T.

Examiner

Jeffrey A. Shapiro

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 04 June 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-56 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-56 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 09 April 1999 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Election/Restrictions***

1. The election/restrictions outlined in the previous two actions are hereby withdrawn.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the second outer wall (584) having corresponding arrangements of apertures to the first inner wall (557) must be shown or the feature(s) canceled from the claim(s). See Claim 7, lines 4-8. No new matter should be entered.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 3,7 and 36 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The recitation in lines 4-8 of Claim 7, for example, of a second outer wall having corresponding apertures to the first, inner wall, appears to not be described in the specification. It appears that the extent of the description of outer wall (584) is found on p.74, lines 1-3 and p. 76, lines 3-5 of the specification.

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5. Claims 1-56 are rejected under 35 U.S.C. 112, second paragraph, in view 37 C.F.R. 1.75(b), on the grounds of multiplicity and prolix. It has been held that the presentation of a large number of claims may pose a burden to the PTO and the courts, not justified by the extent of Applicants' interest in latitude in claiming the invention. (Applicant's latitude in stating their claims in regard to number and phraseology employed "should not be extended to sanction that degree of repetition and multiplicity which beclouds definition in a maze confusion."). *In re Chandler*, 117 USPQ 361 (CCPA 1958). See also MPEP 2173.05(n).

Regarding prolix, "claims are rejected as prolix when they contain long recitations or unimportant details which hide or obscure the invention. *Ex parte Iagan*, 1911 C.D. 10, 162 O.G. 538 (Comm'r Pat. 1910). See also MPEP 2173.05(m). The application as filed contains fifty-six claims. For example, note that Claim 8 claims "an item supporting member moveably mounted in supporting connection with the first and second connecting members, wherein the supporting member is generally movable horizontally..." Claim 13 claims apertures in first and second arrangements. Claims 14 and 15 claims the feature that the apertures are elongated. Subsequent claims describe versions of these claims, but using different wording with apparently convoluted and unnecessarily complex recitation. Again, it is not that Applicant should be prevented from claiming his invention, but that the claims should not describe the invention in such detail as to obscure the patentable subject matter of the invention. All of these claims are just some of the numerous examples of claims exhibiting multiplicity and prolix. Regarding Claim 3, it is understood that when the drawer guide protrusions

are placed in their corresponding apertures, that they will extend through the wall into a space on the other side of the wall. Claim 36, for example, appears to claim the same thing. These themes appear to run throughout the Applicant's claims.

While the Examiner does not take the position that applicants should be precluded from submitting claims defining their invention, the number originally filed is in excess of a reasonable number with which to claim the invention.

Particularly in the context of 37 C.F.R. 1.75 and the cited opinions, rejection on the grounds of prolix and multiplicity is appropriate.

Even though the rejection may be traversed, applicant is required in response to this action to designate no more than either

- (1) a total of ten claims including up to four independent claims, or
- (2) a total of twenty claims including up to two independent claims, for reexamination on the merits.

Considering the cited references, it is noted that the average number of claims patented in applications throughout the office is approximately 1.75 independent claims and 16.875 total claims. Therefore, the designation of up to the indicated numbers of claims affords applicant ample latitude in claiming the invention, is reasonable in view of the state of the art and the nature of the invention as well as considering the stage of prosecution and the number of claims originally presented and examined, and is necessary to permit a complete examination without the imposition of serious burden on the Office.

Applicants' are advised that should they wish to traverse the rejection previously outlined, that in addition to pointing out alleged errors in the multiplicity/prolix rejection, reasons for traversal should also be addressed.

Applicant is advised that should it be traversed and repeated, this is an *appealable* ground of rejection.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-12, 14-19, 29-36, 40-48 and 53-56 are rejected under 35 U.S.C. 102(b) as being anticipated by Krivec.

Krivec describes the apparatus as follows.

As described in Claims 1, 29-36, 40-48 and 53-56;

a supporting structure (12) including

a generally vertically extending wall (14), the wall including

at least two sets of generally horizontally disposed apertures (166a-c)

therein, wherein each set of apertures includes a first aperture (166a or b)

and

a second aperture (166c),

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wherein the first aperture is disposed vertically above the second aperture;  
and

a releasible connecting member (22),

wherein the connecting member in an operative position extends  
substantially between the sets of apertures and in releasible supporting  
connection with the wall,

wherein the releasible connecting member is adapted for supporting items  
in operative connection therewith,

wherein the releasible connecting member includes

two disposed pairs of projecting portions (48a-c) corresponding to the sets  
of apertures, and

wherein each pair of projecting portions includes

a first projection (55a or b) and

a second projection (55c), and

wherein in the operative position of the connecting member the first  
projection extends in a first aperture and the second projection extends in  
a second aperture, and

wherein in cross section the second projection extends from the  
connecting member in generally

a first direction, and

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wherein the first projection includes

an inner portion (59),

wherein the inner portion extends from the connecting member in generally the first direction, and

wherein the first projection includes an end portion (see figure 5, for example),

wherein the end portion extends generally transverse to the first direction and away from the second projection , and

wherein the connecting member is placed in supporting connection with the wall by extending the end portions of the first projections in the first apertures of the sets and then rotating the connecting member relative to the wall to the operative position

wherein the inner portions extend in the first apertures and the second projections extend in the second apertures.

As described in Claim 2;

the releasible connecting member comprises

a body and

wherein the first projection extends from the body, and



wherein in the operative position of the connecting member the end portion and the body extend on opposed sides of the vertically extending wall.

As described in Claim 3;

an outer wall extending generally parallel to and in operatively fixed connection with the vertically extending wall,

wherein a space extends between the vertically extending wall and the outer wall and

wherein in the operative position of the connecting member the end portion extends in the space.

(Note it is inherent that a space between the vertical extending wall and another wall or object would necessarily have to be present in order for the invention to work properly by allowing the insertion or removal of said connecting member and associated projections. For example, if such a cabinet was disposed next to the wall or a room such that the vertical extending wall of the cabinet and the room wall were flush, it would not be possible to properly insert said connecting member.)

As described in Claim 4;

wherein a horizontally disposed pair of sets of apertures comprise an arrangement, and

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wherein the vertically extending wall comprises a plurality of vertically disposed arrangements of apertures,

wherein the connecting member is positionable to engage any one of the arrangements of apertures in the operative position,

whereby the connecting member is selectively vertically positionable relative to the vertically extending wall;

As described in Claims 5 and 10, 44-49;

a moveable item supporting member (such as a drawer or shelf)(16) in operative supporting connection with the connecting member,

wherein in the operative position of the connecting member the item supporting member is moveable relative to the wall.

As described in Claim 6;

wherein the item supporting member is moveable relative to the vertically extending wall in a generally horizontal direction;

As described in Claims 7;

wherein the vertically extending wall comprises

a first wall (see col. 3, lines 1-5) with first arrangements of apertures therein, and further comprising:

a second wall (see col. 3, lines 1-5),

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wherein the second wall is generally vertically extending and horizontally disposed from the first wall,

wherein the second wall comprises

a plurality of second arrangements of apertures therein,

wherein each of the second arrangements generally vertically correspond to one corresponding first arrangement of apertures in the first wall, and

a first connecting member in operative connection with one of the first arrangements of apertures and

a second connecting member in operative connection with one of the second arrangements of apertures, and

an item supporting member in supporting connection with the first and second connecting members.

As described in Claims 8;

wherein the item supporting member is moveably mounted in supporting connection with the first and second connecting members,

wherein the supporting member is generally moveable horizontally relative to the first and second walls.

As described in Claim 9;

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a plurality of first and second connecting members, each connecting member in supporting connection with the first and second walls respectively;

a plurality of item supporting members, each item supporting member independently moveably mounted in supporting connection with one first supporting member and one second supporting member.

(Note figure 1.)

As described in Claims 11, 51 and 52;

wherein the item supporting member comprises

a shelf

(Note that a drawer and shelf are considered to be art-known equivalents in that they both support items. Further, a drawer could be reasonably construed as a shelf. A shelf is defined in Merriam Webster's Collegiate Dictionary, 10<sup>th</sup> edition, at p. 107, copyright 1998, as "a thin flat, usually long and narrow piece of material fastened horizontally at a distance from the floor to hold objects" or "something resembling a shelf in form or position..." A drawer resembles a shelf in form or function in its static state in that it supports items placed on it.)

As described in Claim 12;

wherein the item supporting members are vertically spaced from one another by a first vertical distance, and

wherein the first and second arrangements of apertures are spaced from one another by generally the first vertical distance.

As described in Claim 14;

wherein at least one first aperture in a set is elongated generally horizontally (note (166c)), and

wherein the first projection which extends in the one aperture in the operative position of the connecting member is elongated in a direction generally parallel to the first direction such that in the operative position of the connecting member the elongated first projection extends into and substantially fills the horizontally elongated first aperture.

As described in Claim 15;

wherein at least one second aperture in a set is elongated generally vertically, and

wherein the second projection which extends in the one second aperture in the operative position of the connecting member is elongated in a direction generally parallel to the first direction such that in the operative position of the connecting member the elongated second projection extends in and substantially fills the vertically elongated aperture.

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As described in Claim 16;

wherein the first aperture in each of the sets is elongated generally horizontally and the second aperture in each of the sets is elongated generally vertically, and

wherein the projections in the pairs are configured such that the first projections extend in and substantially fill the first apertures and the second projections extend in and substantially fill the second apertures.

As described in Claim 17;

wherein in each of the sets of apertures the second aperture is disposed horizontally from the first aperture.

As described in Claim 18;

wherein the second apertures in the sets are spaced further apart horizontally than the first apertures in the sets.

As described in Claim 19;

a plurality of first connecting members in supporting connection with the first wall, and

a plurality of second connecting members in supporting connection with the second wall,

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wherein each of the first and second connecting members is configured to be engageable in the operative position with either the first wall or the second wall, and further comprising a plurality of item supporting members (drawers or shelves 16), wherein each item supporting member is in operative supporting connection with at least one first connecting member and at least one second connecting member.

See figure 1.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Krivec. Krivec discloses the apparatus described above. Krivec does not expressly disclose apertures and associated arrangements of sets of protrusions having different vertical spacings, or apertures having different vertical spacings. Nonetheless, it would be expedient for one ordinarily skilled in the art to have different arrangements or combinations of drawer guides and associated connection devices in order to allow the

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apparatus to be modular and adaptable to the specific situation. Therefore, it would have been obvious to obtain the invention as described in Claim 13.

Claims 37-39 and 20-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lipps in view of Krivec.

Lipps discloses a medical cabinet, having drawers (20), shelves and doors (28), said door having a lock (58) able to be interacted with a user input device (such as a typical key), and a computer system (see figures 4-10) for keeping track of various parameters and controlling input and access to the system. Lipps does not expressly disclose the drawer guide, connecting appendages and associated arrangements of Claims 1-19.

Krivec discloses a cabinet as described above.

At the time of the invention, it would have been obvious to a person of ordinary skill in the art to have used the cabinet configuration of Krivec in the cabinet of Lipps, in order to attach drawer guides in particular modular and adaptable fashion.

The suggestion/motivation for doing so would have been to "provide an interlock apparatus which avoids the disadvantages of the prior assemblies while affording structural and operational advantages." See col. 1, lines 38-40.

Regarding Method Claims 20-28, note that one ordinarily skilled in the art is capable of and would find it necessary to perform the method as described in Claims 20-28, or a functional equivalent thereof. As the apparatus of Colson, Jr. et al and



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Krivec, as described above, disclose the invention of the Applicant, method Claims 20-28 are also rejected.

### ***Double Patenting***

10. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

11. Claims 1-56 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-28 of U.S. Patent No.

5,961,036 in view of Lipps and further in view of Krivec. Lipps and Krivec disclose the device as described above. The '036 patent discloses a computer system for a medical cabinet having drawers. It would have been obvious for one of ordinary skill in the art to have altered the apparatus of the '036 patent by employing the features of the device described by Lipps and Krivec, as described above, in order to obtain the apparatus as described in Claims 1-56. See suggestions/motivations above.

Claims 1-56 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-20 of U.S. Patent No.

6,073,843 in view of Lipps and further in view of Krivec. Lipps and Krivec disclose the

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device as described above. The '843 patent discloses a computer system for a medical cabinet having drawers. It would have been obvious for one of ordinary skill in the art to have altered the apparatus of the '843 patent by employing the features of the device described by Lipps and Krivec, as described above, in order to obtain the apparatus as described in Claims 1-56. See suggestions/motivations above.

Claims 1-56 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-17 of U.S. Patent No. 5,957,372 in view of Lipps and further in view of Krivec. Lipps and Krivec disclose the device as described above. The '372 patent discloses a computer system for a medical cabinet having drawers. It would have been obvious for one of ordinary skill in the art to have altered the apparatus of the '372 patent by employing the features of the device described by Lipps and Krivec, as described above, in order to obtain the apparatus as described in Claims 1-56. See suggestions/motivations above.

Claims 1-56 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-37 of U.S. Patent No. 5,790,409 in view of Lipps and further in view of Krivec. Lipps and Krivec disclose the device as described above. The '409 patent discloses a computer system for a medical cabinet having drawers. It would have been obvious for one of ordinary skill in the art to have altered the apparatus of the '409 patent by employing the features of the device described by Lipps and Krivec, as described above, in order to obtain the apparatus as described in Claims 1-56. See suggestions/motivations above.

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Claims 1-56 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-58 of U.S. Patent No. 6,163,737 in view of Lipps and further in view of Krivec. Lipps and Krivec disclose the device as described above. The '737 patent discloses a computer system for a medical cabinet having storage locations. It would have been obvious for one of ordinary skill in the art to have altered the apparatus of the '737 patent by employing the features of the device described by Lipps and Krivec, as described above, in order to obtain the apparatus as described in Claims 1-56. See suggestions/motivations above.

Claims 1-56 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-13 of U.S. Patent No. 5,404,384 in view of Hingham et al and further in view of Krivec. Hingham et al and Krivec disclose the device as described above. The '384 patent discloses a computer system for a medical storage area. It would have been obvious for one of ordinary skill in the art to have altered the apparatus of the '384 patent by employing the features of the device described by Hingham et al and Krivec, as described above, in order to obtain the apparatus as described in Claims 1-56. The suggestion/motivation would have been to allow for a maximum of modularity and adaptability so as to optimize space in the medical cabinet.

Claims 1-56 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-7 of U.S. Patent No. 5,533,079 in view of Hingham et al and further in view of Krivec. Hingham et al and Krivec disclose the device as described above. The '079 patent discloses a computer

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system for a medical storage area. It would have been obvious for one of ordinary skill in the art to have altered the apparatus of the '079 patent by employing the features of the device described by Hingham et al and Krivec, as described above, in order to obtain the apparatus as described in Claims 1-56. The suggestion/motivation would have been to allow for a maximum of modularity and adaptability so as to optimize space in the medical cabinet.

Claims 1-56 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-20 of U.S. Patent No. 5,971,593 in view of Hingham et al and further in view of Krivec. Hingham et al and Krivec disclose the device as described above. The '593 patent discloses a computer system for a medical storage area. It would have been obvious for one of ordinary skill in the art to have altered the apparatus of the '593 patent by employing the features of the device described by Hingham et al and Krivec, as described above, in order to obtain the apparatus as described in Claims 1-56. The suggestion/motivation would have been to allow for a maximum of modularity and adaptability so as to optimize space in the medical cabinet.

Claims 1-56 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over Claims 1-27 of U.S. Patent No. 5,993,046 in view of Hingham et al and further in view of Krivec. Hingham et al and Krivec disclose the device as described above. The '046 patent discloses a computer system for a medical storage area. It would have been obvious for one of ordinary skill in the art to have altered the apparatus of the '046 patent by employing the features of

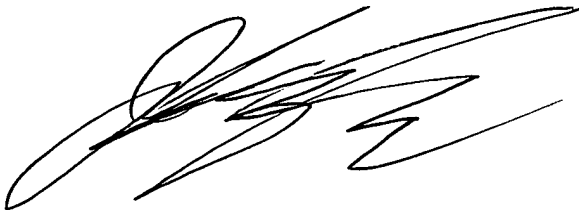
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the device described by Hingham et al and Krivec, as described above, in order to obtain the apparatus as described in Claims 1-56. The suggestion/motivation would have been to allow for a maximum of modularity and adaptability so as to optimize space in the medical cabinet.

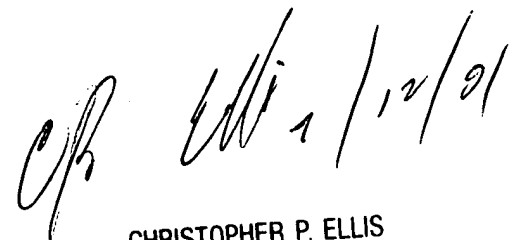
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey A. Shapiro whose telephone number is (703)308-3423. The examiner can normally be reached on 9:00 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher P. Ellis can be reached on (703)308-2560. The fax phone numbers for the organization where this application or proceeding is assigned are (703)308-0552 for regular communications and (703)308-0552 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)308-1113.



Jeffrey A. Shapiro  
Patent Examiner,  
Art Unit 3651



CHRISTOPHER P. ELLIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600

July 11, 2001